

27. Additionally, the MCSD Purchasing Policy stated that MCSD could not exclude ABS from submitting a bid just because Mr. Arbogast was a MCSD employee, as long as the potential conflict of interest was disclosed, which it was. *See Exhibit 9* (Morrow County School District policy, "District Purchasing", paragraph 12, adopted 10/12/98).
28. I discussed the issue of whether ABS could permissibly bid on MCSD E-rate work with Rhonda Lorenz, the MCSD Business Manager. We agreed that there was no prohibition on ABS bidding on E-rate work or non-E-rate work for MCSD.
29. As such, MCSD solicited quotes and bids from ABS for both E-rate eligible and non-E-rate eligible products and services. Mr. Arbogast informed the County School District Board of the potential conflicts of interest and MCSD made all necessary efforts to exclude Mr. Arbogast from the bid reading and selection process. *See Exhibit 26* (August 20, 2001 Minutes from Executive Session Board Meeting, Nate Arbogast's Presentation to the Board).
30. At the time, I reviewed documents from ABS that proved to my satisfaction that ABS was not making a profit on the E-rate products/services it provided to MCSD.
31. At all times during my tenure as MCSD Superintendent, MCSD's E-rate competitive bidding process, including vendor selection and contract award decisions, was ultimately controlled by me in my role as the MCSD Superintendent and the Morrow County School District Board. At no time did I or MCSD relinquish control of the bidding process to Mr. Arbogast. Mr. Arbogast was an employee of MCSD who reported to me. Although Mr. Arbogast prepared the E-rate paperwork and performed the legwork due to his position as MCSD's Technology Coordinator, he was not the decision maker on vendor selection or contract awards.

#### **Funding Year 2001**

32. During Funding Year 2001, after receiving no bids from either the posting of the Form 470 or the newspaper advertisement calling for bids, MCSD asked ABS to bid on an E-rate eligible high speed internet project for MCSD.
33. In Funding Year 2001 the bid received from ABS was the lowest, followed by the bid received from Morrow Development Corporation ("MDC"). MCSD also solicited bids from Qwest and UUNET.
34. At the time, I did not know that it would be an E-rate rules violation for ABS to bid on E-rate products and services. To my knowledge, no one within MCSD knew that this was a problem. I believed MCSD was in compliance with Oregon and MCSD policy, and was not aware of any other rule that would prohibit this. So, the MCSD Board and I evaluated the bids received and chose ABS as the vendor for the high speed internet access project.

35. On January 18, 2001, MCSD filed a Form 471 for Funding Year 2001, which included the contract for high speed internet with ABS. *See Exhibit 18 (MCSD Funding Year 2001 Forms 471).*
36. Before completing any of the contracted-for services, ABS informed MCSD that it would not be able to complete the project. My understanding was that ABS was not big enough, with enough capital to do all of what MCSD needed.
37. MCSD sought out a replacement company for the high speed internet access project. MDC was the only interested company able to meet the school district's needs. On August 20, 2001, MCSD entered into an agreement with MDC to complete the high speed internet access project. *See Exhibit 30 (Agreement between MCSD and MDC for High Speed Internet Access Project).*
38. On October 11, 2001, MCSD contacted USAC requesting a SPIN change for the high speed internet access project from ABS to MDC. *See Exhibit 16 (Letter from MCSD to USAC re: Spin Correction Request).*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7-18, 2011.

A handwritten signature in cursive script, appearing to read "Bruce Anderson", written in black ink.

Bruce Anderson



**EXHIBIT 29**

**Declaration of Rhonda Lorenz**



Morrow County School District  
PO Box 368  
270 West Main  
Lexington, OR 97839  
Telephone: (541) 989-8202  
FAX: (541) 989-8470

**FAX**

Date:

7-19-11

Number of pages  
including cover sheet:

TO

Attn: Ryan Spiegel  
Phone: Winston + Strawn  
Fax: 1-202-282-5100

FROM:

Dina Dirksen  
Phone: (541) 989-8202  
Fax: (541) 989-8470**REMARKS:**

RE: Declaration of Rhonda Lorenz

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**DECLARATION OF RHONDA LORENZ**

I, Rhonda Lorenz, declare under oath, pursuant to 28 U.S.C. § 1746 and 47 C.F.R. § 1.16:

1. I recently retired as the Business Manager for the Morrow County School District ("MCSD"). I am a resident of the State of Oregon and am more than 18 years of age.
2. I make this Declaration based upon facts within my personal knowledge and a review of the relevant records of the MCSD.
3. I worked for MCSD for approximately 29 years, since 1982.
4. From 1987 – 1989, I served as the business manager of MCSD. In 2000, I returned to the position of MCSD business manager and remained in that role until I retired. I reported to the Superintendent. The role of the business manager includes helping to develop budgets, advising the Superintendent on budgets, as well as some contract negotiations and other tasks.
5. I have a high school diploma. I do not have a college degree.
6. MCSD did not have a computer network system prior to Mr. Arbogast's hiring by the district in 1996. MCSD had approximately 100 computers when Mr. Arbogast was hired, and by the time he resigned, more than 700 computers were connected to the MCSD network system.

**Hiring of Nate Arbogast**

7. Mr. Arbogast was hired by MCSD as the Technology Coordinator in July of 1996.
8. At the time, Charles (Chuck) Starr was the Superintendent of MCSD and Mr. Arbogast's direct supervisor. Mr. Starr is now deceased.
9. Based on my review of the MCSD records, Mr. Arbogast's duties upon hiring included facilitating and implementing Local Area Networks (LAN) and Wide Area Networks (WAN), coordinating and providing software training, coordinating installation of all software, and maintaining a high level of computer-related training for employees of MCSD. See Exhibit 24 (96-97 Goals & Criteria, Nate Arbogast).

**E-rate**

10. When the E-rate program began in 1998, Mr. Arbogast, was responsible for drafting the district's technology plan and the E-rate application process. His job description for 1998 included to coordinate E-rate documentation. See Exhibit 25 (Morrow County School District Job Description for Computer Technician, signed 9/8/98 by Nate Arbogast).

11. Mr. Arbogast did not receive any formal or informal training on E-rate from MCSD. My understanding was that he learned the E-rate process on his own, and would contact the E-rate helpline and the USAC website for guidance.
12. Due to the complexity of the E-rate application process, the MCSD relied on Mr. Arbogast's technological expertise to ensure compliance with program rules and regulations. It was my impression that Mr. Arbogast worked hard to stay informed of all E-rate rules.
13. As Business Manager for MCSD, Mr. Arbogast and I would discuss MCSD budget and funding issues related to E-rate.

#### **ABS and Mr. Arbogast**

14. When I became aware that Mr. Arbogast's company, Arbogast Business Services ("ABS") was going to bid on MCSD E-rate projects, myself, Mr. Arbogast, and Julie Ashbeck (MCSD's Human Resources Director) sat down together and consulted the relevant Oregon Revised Statutes and MCSD policies, as well as the FCC regulations of which we were aware. I was skeptical and wanted to make sure MCSD was in compliance. Mr. Arbogast and Ms. Ashbeck similarly wanted to make sure that MCSD was in compliance with all state and local competitive bidding requirements.
15. Based on our reading of the statutes at the time, we all believed that as long as the conflict of interest was declared and measures were put in place to avoid any competitive bidding violations, ABS could legally bid on E-rate eligible products and services.
16. After these meetings and discussions with Mr. Arbogast and Ms. Ashbeck, I then discussed the issue of whether ABS could permissibly bid on MCSD E-rate work with Superintendent Anderson. The Superintendent agreed that there was no prohibition on ABS bidding on E-rate work or non-E-rate work for MCSD.
17. As one of the few companies in the school district providing technology goods and/or services, ABS was called upon to bid for various E-rate eligible and non E-rate eligible goods and services.
18. It was not until MCSD received its Funding Commitment Adjustment Letter rejecting all funding requests for Funding Year 2002 that we became aware that it was a violation of E-rate competitive bidding rules when a Service Provider listed on the Form 471 is associated with the contact person listed on the Form 470.
19. Once informed of the USAC competitive bidding rules about who could be listed as the contact person on the Form 470, MCSD took the necessary steps to ensure future compliance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2011.

  
Rhonda Lorenz





## **EXHIBIT 30**

**Agreement between MCSD and MDC  
for High Speed Internet Access Project**

## AGREEMENT

DATE: August 20, 2001.

PARTIES: The Parties to this Agreement are MORROW DEVELOPMENT CORPORATION, an Oregon public benefit corporation ("MDC") and MORROW COUNTY SCHOOL DISTRICT, NO. 1 ("School").

### RECITALS

School wishes to enter into a business relationship with MDC for the provision of Services in connection with School's High Speed Internet Access Project. School has sought and is seeking funds which will provide for the operation of such High Speed Internet Access Project. MDC has submitted a bid to School to provide Services in connection with High Speed Internet Access Project. A copy of the bid quote is attached hereto as Exhibit 1. The parties wish to, in this Agreement, accept and supplement the bid quote and clarify their respective rights and obligations in connection with MDC's provision of Services for the High Speed Internet Access Project.

### AGREEMENT

1. **Definitions.** For purposes of this Agreement, the following terms used herein but not otherwise defined herein will have the following meaning when used with initial capitalization, whether singular or plural:

(a) "High Speed Internet Access Project" or "HSIAP" means the project undertaken by School to allow all School sites in Morrow County to obtain access to advanced telecommunications and information services. HSIAP has been designed to be implemented in multiple phases and is more generally described in Exhibit 1 attached hereto.

(b) "Services" means the provision of basic, conduit access to the Internet for individual School sites.

2. **Securing of Funds.** All the obligations of either party under this Agreement are contingent upon School securing a source of funds which will fund the High Speed Internet Access Project. If the funds are not secured, neither party has any further obligations under this Agreement.

3. **MDC's Obligation.** MDC will use all funds received from school for Services directly related to the HSIAP, and for its costs directly incurred in connection with this project. MDC will use its best efforts to construct and service a system of a design and capacity acceptable to School and as set forth in Exhibit 1.

4. **Completion of High Speed Internet Access Project.** The parties recognize that uncertainties concerning the costs of the HSIAP and related expenses are uncertain and unknown, and as a consequence, MDC may not be able to completely perform all terms of the bid and establish High Speed Internet Access to all School sites with the funds provided. School acknowledges that HSIAP may not be completed within the limits of the funds provided by School. So long as MDC uses funds consistent with its obligations under this Agreement, School will not hold MDC liable nor require MDC to perform services connected with the installation and servicing of the HSIAP to the extent that said services cannot be completed from the funds provided by School.

5. **Charges to School.** MDC agrees that, in exchange for the agreements made by School in this document, MDC will allow School to continue to use HSIAP in the future under the following terms:

(a) MDC will charge School fees in accordance with the rates it establishes for a preferred provider. These fees will not be in excess of the actual amount of MDC's reasonably incurs in constructing, maintaining and operating MDC's HSIAP.

(b) In the event MDC receives income from other users of MDC's HSIAP, that income will reduce the preferred provider rate schedule for general maintenance and operation of the system to a rate not less than only the specific costs for provision of Services to School.

(c) **Point of Presence (POP).** MDC will use its best efforts to provide to School a space available for School to place its electronic equipment at POP sites compatible with the needs of the School to use the HSIAP.

(d) School will provide property locations on School property acceptable to MDC for purposes of easement access and location and infrastructure as reasonably necessary to provide Services through the HSIAP. School will provide all sites reasonably requested by MDC on properties owned by School under the terms, conditions and payment schedule set forth on the Lease attached hereto as Exhibit "B."

5. **Regenerators.** MDC will use its best efforts to provide to School a space available for School to place its electronic equipment at regenerator sites compatible with the needs of the School to use the HSIAP.

6. **Default.** Neither party shall be in default under this Agreement, or in breach of any provision thereof, unless and until the other party give the defaulting party written notice of such breach and the defaulting party shall have failed to cure the same within thirty (30) days after receipt of such notice, provided, however, that where such breach cannot reasonably be cured within a thirty (30) day period, if the defaulting party proceeds promptly to cure the same and with due diligence, the time for curing said breach shall extend for such reasonable period of time as may be necessary to complete the curing. Upon failure of a party to timely cure any such breach or proceed to



reasonably cure as provided above, the nondefaulting party shall have the right, in its sole discretion, to take such action as it may deem necessary to cure the breach. In event of default, the nondefaulting party shall have all remedies available to it under applicable law including, in appropriate situations, the right to specific performance.

7. **Liens.** MDC shall keep the HSIAP free and clear of all mechanics or materialmens liens. In event any such lien attaches to the High Speed Internet Access, and is not discharged to the satisfaction of School, School may discharge said lien and MDC shall indemnify School against all costs and expenses (including reasonable attorney fees) incurred and discharging and releasing such lien.

8. **Term of Agreement.** This Agreement will terminate upon the later of the following:

1. Ten years from the date of this Agreement unless extended by mutual agreement.
2. Upon full payment of the \$396,000.00 of Basic Rent potentially due under the Lease entered into between the parties simultaneously with this Agreement.

The parties contemplate that eventually a replacement information communication system may be in a place and once said system is approved by both parties as a substitute for the existing HSIAP, this agreement will terminate without further obligation of either party.

9. **Rights to Fibers.** School shall have the right to use only such fibers in the HSIAP as are reasonably necessary for school purposes. This amount is deemed to be no less than six (6) fibers for each School site. If the use of the fiberoptic system approaches capacity, School shall so configure and confine its use of the HSIAP so as to as much as reasonably possible minimize or reduce its use of fiberoptic's, provided, however, that this shall not prohibit the School to use as much of the fiberoptic's as is reasonably necessary for School related purposes. School shall have no right to use any portion of the High Speed Internet Access for commercial purposes or for purposes not related to School purposes without the prior written consent of MDC.

9. **Miscellaneous Provisions.**

A. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective permitted assigns.

B. **Assignment.** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other parties.

C. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement.



**D. Notices.** All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties to the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

To: Morrow County School District  
180 West Main  
P.O. Box 368  
Lexington, OR 97839

To: Morrow Development Corporation  
P.O. Box 200  
Boardman, Oregon 97818

Any notice or other communication shall be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the second day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

**5. Amendments.** This Agreement may be amended only by an instrument in writing executed by all the parties.

**7. Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

**8. Facsimile Signatures.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile transmitted signatures by signing an original document.

**9. Further Assurances.** Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, in order to carry out the intent and accomplish the purposes of this Agreement.

**10. Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

**11. Expenses.** Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear the party's own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

12. **Waiver.** Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-laws principles.

14. **Attorney Fees.** If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

15. **Arbitration.** Any dispute, controversy, or claim arising out of or relating to this Agreement shall be settled by arbitration. Unless the parties otherwise agree, the arbitration shall be administered consistent with the rules of arbitration of the Circuit Court for Morrow County and ORS Chapter 36. Judgment on the award rendered by the arbitrator may be entered in the Circuit Court in the county in which the arbitration occurs, and the resolution of the disputed matter as determined by the arbitrator shall be binding on the parties. There shall be one arbitrator who shall be selected by mutual agreement and if no agreement can be reached by the presiding Circuit Court judge of the 6<sup>th</sup> Judicial District from the list of arbitrators and by the Circuit Court. Any arbitration shall be conducted in Morrow County, Oregon, in accordance with the following provisions of ORS Chapter 36 and state and local Circuit Court rules.

(a) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator in any of the pending cases or, if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.

(b) A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration (or pending the arbitrator's determination of the merits of the dispute, controversy, or claim).

(c) The arbitrator shall have authority to issue preliminary and other equitable relief.

(d) Discovery proceedings of the type provided by the Oregon Rules of Civil Procedure shall be permitted both in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery shall be resolved by the arbitrator.



(e) The arbitrator shall have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.

(f) The arbitrator shall have the authority to award any remedy or relief that an Oregon court could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator shall not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered or loss incurred.

(g) The award shall be in writing, shall be signed by the arbitrator, and shall include a statement regarding the disposition of any claim.

**16. Injunctive and Other Equitable Relief.** The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties shall be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

**18. Exhibits.** The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

**19. Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

**20. Entire Agreement.** This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

Dated: August 20, 2001.

Morrow County School District #1

By: 

Dated: Aug 20, 2001.

Morrow Development Corporation

By: 